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STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
04 JUN 30 AM 9:42
DIVISION OF
ADMINISTRATIVE
HEARINGS

ELLEN EDITH HANSON,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 22-02718

v.

AT

DOAH Case No. 03-2306

Dmk-CL05

ORLANDO UTILITIES COMMISSION,

FCHR Order No. 04-066

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Petitioner, ELLEN EDITH HANSON, filed a complaint of discrimination on August 29, 2002, pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, ORLANDO UTILITIES COMMISSION ("OUC"), committed an unlawful employment practice on the basis of her sex, disability and in retaliation for complaining of sexual harassment. The allegations set forth in the complaint were investigated and on May 12, 2003, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief on June 20, 2003, and was granted an evidentiary hearing on August 27 and 28, 2003, in Orlando, Florida, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of Dismissal dated October 31, 2003.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact and Conclusions of Law

The Commission's file contains a three volume transcript of the proceeding before the Administrative Law Judge.

The ALJ found that the Petition for Relief was filed 39 days after the date of determination: "no cause" by the Commission and that the Petitioner failed to show good cause for the delay in filing. Therefore, the ALJ granted the Respondent's Motion to Dismiss for Untimeliness at the final hearing. However, as discussed during the case management conference, the ALJ proceeded to conduct a hearing on the merits of Petitioner's allegations.

In addition to the issue of timely filing the Petition, the ALJ identified seven additional issues in the case:

1. Whether Petitioner failed to timely file her charge of discrimination with respect to her claim of harassment?

The ALJ found that on or about July 5, 2001, Petitioner expressed some concern to her supervisor about a co-worker. The Petitioner did not file a charge with the Florida Commission

on Human Relations until August 29, 2002 or over 420 days following her latest date of alleged harassment. Therefore, the claim of sexual harassment was untimely filed.

2. Whether Respondent promptly and thoroughly investigated Petitioner's claim of sexual harassment?

The Respondent promptly conducted a thorough investigation, including numerous interviews of the Petitioner, her co-workers and supervisors. Initially, the Petitioner did not complain of any sexual harassment but was rather concerned about a co-worker's continued attention. After completing its investigation in early August, 2001, the Respondent determined that sexual harassment had not occurred but instructed the co-worker, verbally and in writing, not to have any further contact with Petitioner. In addition, the Respondent also asked Petitioner to discontinue "counseling employees" to protect against any future incidents or allegations of sexual harassment.

3. Whether Respondent took measures reasonably calculated to end and prevent any sexual harassment?

The Respondent immediately investigated and, upon the conclusion of the investigation found no harassment, but still took action to minimize any further contact between parties and additionally cautioned parties to take actions aimed at preventing any future sexual harassment or potential allegations of same.

4. Whether Petitioner suffered from a disability? And, if so, what was the nature of her disability?

Following conclusion of Respondent's investigation into Petitioner's complaints of sexual harassment, Petitioner applied for and received a medically-supported leave of absence for 30 days in which she drew disability benefits. Evidently, the leave was because of her "stressful" condition. She applied to return from the leave after 21 days and was released by her and the Respondent's doctors to return to work in the same position and rate of pay as before her leave. She also had an unexplained "sick leave" absence of more than 16 hours on April 6-8, 2002, in which she was counseled for failing to abide by Respondent's policies regarding sick leave. She also failed to show that her "disability" caused by stress was not temporary and that it substantially limited one or more major life activities.

5. Whether Respondent provided Petitioner with a reasonable accommodations for her alleged disability?

She failed to show that her "disability" caused by stress was not temporary and that it substantially limited one or more major life activities.

6. Whether Respondent discriminated against Petitioner on the basis of her sex and/or disability?

She failed to establish that her alleged handicap (stress) was a determining factor in the employment decision not to promote her. She further provided no direct evidence of discrimination based on her sex. Since there is no direct evidence of discrimination, the Petitioner must use circumstantial evidence and follow the McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), framework. Even if the Petitioner was able to establish a prima facie case, the Respondent in this case presented legitimate, non-discriminatory reasons for its actions that is she, along with another employee, was disciplined because they failed in their job responsibilities. In addition, Petitioner was disciplined for misuse of sick leave policy.

7. Whether Respondent retaliated against Petitioner for complaining of sexual harassment?

To establish a prima facie case of retaliation, the Petitioner must demonstrate that: (1) she engaged in a protected activity; (2) suffered an adverse employment action; and (3) there was causal link between her protected activity and the adverse employment activity. The ALJ found that she failed to demonstrate any causal connection between her complaint of sexual harassment and any alleged adverse employment actions.

In essence, the ALJ found that the Petitioner failed to timely file both her claim of sexual harassment and her Petition for Relief. In spite of being barred due to her untimely filing, the ALJ went further and conducted a two-day hearing on the merits after which he concluded "There was no evidence that Petitioner was unlawfully harassed, discriminated against, or retaliated against in any way during her employment with the Respondent."

We adopt the Administrative Law Judge's findings of fact and conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a nineteen page document without an overall title but broken into three sections entitled, "Response to Statement of Issues (items 1-8);" "Response to the Preliminary Statements (items 1-20); and "Summary."

The Response to Statement of Issues (items 1-8 on pages 2-7) is organized under the ALJ's Recommended Order Statement of Issues in the case. Generally, the Petitioner provides her response to each of the issues raised by the ALJ and reorders and reweighs the facts to support her responses. In addition, she adds materials about the law but fails to show in any of her responses where the ALJ lacked substantial and competent evidence supporting his finding of facts. She also provides no credible evidence that the ALJ's conclusions of law were improper.

The Response to the Preliminary Statements (items 1-20 on pages 8-15) seem to track the ALJ's Findings of Fact. She again reorders and reweighs the facts in order to support her views but fails to point out anywhere the lack of competent and substantial evidence to support the ALJ's findings of fact. She again adds materials about the law but does not provide credible evidence that the ALJ's conclusions of law were improper.

She provides no response to the section of the Recommended Order entitled Conclusions of Law (§ 21-48) but rather completes her exceptions under her notation, Summary (pages 15-19). In her Summary, she again reorders and reweighs the facts to support her view. She offers no evidence that the ALJ did not have substantial and competent evidence to support his determination of facts but rather challenges his order and weighing of the facts placed into evidence during the evidentiary hearing. She states, in conclusion, that Respondent's proffered legitimate reasons for its actions are unworthy of credence but fails to demonstrate that the ALJ did not have substantial and competent evidence to support his determination of facts and conclusions of law.

Based on the foregoing, Petitioner's exceptions are not accepted.

Dismissal

The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 28th day of June, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS



Commissioner Rita B. Craig, Panel Chairperson
Commissioner Gayle Cannon
Commissioner P.C. Wu

Filed this 28th day of June, 2004
in Tallahassee, Florida.



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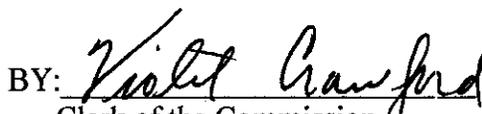
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Honorable Daniel M. Kilbride, Administrative Law Judge (DOAH)
Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 28th day of June, 2004.

BY: 

Clerk of the Commission
Florida Commission on Human Relations